

SENATE BILL NO. 437

INTRODUCED BY J. GROSS, E. MCCLAFFERTY, J. ELLIS, S. MORIGEAU, P. FLOWERS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ABORTION; PROVIDING FOR FUNDAMENTAL REPRODUCTIVE RIGHTS; PROVIDING THAT A PREGNANT WOMAN MAY OBTAIN AN ABORTION BEFORE VIABILITY OF A FETUS; PROVIDING THAT A PREGNANT WOMAN MAY OBTAIN AN ABORTION AFTER VIABILITY OF A FETUS TO PRESERVE THE LIFE OR HEALTH OF THE WOMAN; ALLOWING A PROVIDER OF ABORTION SERVICES TO PROVIDE HUMAN SEXUALITY INSTRUCTION IN SCHOOLS; REVISING THE PRIORITIZATION OF PUBLIC FUNDS FOR FAMILY PLANNING SERVICES; ELIMINATING THE MONTANA ABORTION CONTROL ACT; ELIMINATING THE WOMAN'S RIGHT-TO-KNOW ACT; ELIMINATING THE OFFENSE OF PARTIAL-BIRTH ABORTION; ELIMINATING THE PARENTAL CONSENT FOR ABORTION ACT OF 2013; ELIMINATING THE MONTANA PAIN-CAPABLE UNBORN CHILD PROTECTION ACT; ELIMINATING THE MONTANA ABORTION-INDUCING DRUG RISK PROTOCOL ACT; ELIMINATING THE PROHIBITION ON COVERAGE OF ABORTION SERVICES IN QUALIFIED HEALTH PLANS; PROVIDING THAT A MINOR MAY SELF-CONSENT TO AN ABORTION; AMENDING SECTIONS 20-7-120, 41-1-405, 47-1-104, 50-1-116, 50-1-117, AND 50-15-101, MCA; REPEALING SECTIONS 33-22-116, 33-22-117, 50-20-101, 50-20-102, 50-20-103, 50-20-104, 50-20-105, 50-20-106, 50-20-108, 50-20-109, 50-20-110, 50-20-111, 50-20-112, 50-20-113, 50-20-301, 50-20-302, 50-20-303, 50-20-304, 50-20-305, 50-20-306, 50-20-307, 50-20-308, 50-20-401, 50-20-501, 50-20-502, 50-20-503, 50-20-504, 50-20-505, 50-20-506, 50-20-507, 50-20-508, 50-20-509, 50-20-510, 50-20-511, 50-20-601, 50-20-602, 50-20-603, 50-20-604, 50-20-605, 50-20-606, 50-20-701, 50-20-702, 50-20-703, 50-20-704, 50-20-705, 50-20-706, 50-20-707, 50-20-708, 50-20-709, 50-20-710, 50-20-711, 50-20-712, 50-20-713, AND 50-20-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Fundamental reproductive rights -- policy -- prohibited activities. (1)

The legislature reaffirms the tradition of the state of Montana to protect an individual's right to privacy and



1 procreative autonomy and, in this regard, the legislature finds and declares that each individual in Montana
2 possesses the following fundamental rights:

3 (a) to choose or refuse contraception or sterilization;

4 (b) to choose to parent the individual's child, except as provided in Title 41, chapter 1, part 4, and
5 Title 41, chapter 3; and

6 (c) if the individual becomes pregnant, to choose whether to carry the pregnancy to term or
7 whether, in accordance with [section 2], to have an abortion.

8 (2) The state may not:

9 (a) in regulating or providing benefits, facilities, services, or information, deny or interfere with an
10 individual's fundamental rights described in this section;

11 (b) in enforcing an individual's fundamental rights described in this section, discriminate based on
12 the individual's sex, disability, race, ethnicity, age, national origin, immigration status, or religion. For the
13 purposes of this subsection (2)(b), "sex" includes but is not limited to sex stereotypes, gender identity or
14 expression, perceived gender identity or expression, or sexual orientation.

15 (c) prosecute an individual or otherwise deprive the individual of the individual's rights for any of
16 the following acts:

17 (i) ending or attempting to end the individual's pregnancy, unless in violation of [section 2]; or

18 (ii) failing to act during the individual's own pregnancy based on the potential or actual impact on
19 the individual's health or pregnancy.

20 (3) A fertilized egg, embryo, or fetus does not have independent rights under the laws of this state.

21
22 **NEW SECTION. Section 2. Access to abortion.** (1) Before viability of a fetus, a pregnant woman
23 may obtain an abortion within the state from the woman's chosen health care provider.

24 (2) After viability of a fetus, a pregnant woman may obtain an abortion only to preserve the life and
25 health of the woman as determined by the treating health care provider.

26 (3) For the purposes of this section, the following definitions apply:

27 (a) "Abortion" means the use or prescription of any instrument, medicine, drug, or other substance
28 or device to intentionally terminate the pregnancy of a woman known to be pregnant, with an intention other

1 than to increase the probability of a live birth, to preserve the life or health of the child after live birth, or to
 2 remove an ectopic pregnancy or a dead fetus.

3 (b) "Health" means the prevention of a risk of substantial and irreversible impairment of a major
 4 bodily function.

5 (c) "Health care provider" means any physician, physician assistant, nurse, nurse practitioner, or
 6 other professional who has been determined by the appropriate medical examining and licensing authority to be
 7 competent by reason of education, training, or experience to perform an abortion.

8 (d) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.
 9

10 **Section 3.** Section 20-7-120, MCA, is amended to read:

11 **"20-7-120. Excused absences from curriculum requirements -- notice -- prohibited activities.**

12 (1) A parent, guardian, or other person who is responsible for the care of a child may refuse to allow the child to
 13 attend or withdraw the child from a course of instruction, a class period, an assembly, an organized school
 14 function, or instruction provided by the district through its staff or guests invited at the request of the district
 15 regarding human sexuality instruction. The withdrawal or refusal to attend is an excused absence pursuant to
 16 20-5-103.

17 (2) Any school implementing or maintaining a curriculum, providing materials, or holding an event
 18 or assembly at which the district provides human sexuality instruction, whether introduced by school educators,
 19 administrators, or officials or by guests invited at the request of the school, shall adopt a policy ensuring
 20 parental or guardian notification no less than 48 hours prior to holding an event or assembly or introducing
 21 materials for instructional use.

22 (3) A school district shall annually notify the parent or guardian of each student scheduled to be
 23 enrolled in human sexuality instruction in the district or school in advance of the instruction of:

24 (a) the basic content of the district's or school's human sexuality instruction intended to be taught
 25 to the student; and

26 (b) the parent's or guardian's right to withdraw the student from the district's or school's human
 27 sexuality instruction.

28 (4) A school district shall make all curriculum materials used in the district's or school's human

1 sexuality instruction available for public inspection prior to the use of the materials in actual instruction.

2 ~~(5) A school district or its personnel or agents may not permit a person, entity, or any affiliate or agent~~
 3 ~~of the person or entity to offer, sponsor, or furnish in any manner any course materials or instruction relating to~~
 4 ~~human sexuality or sexually transmitted diseases to its students or personnel if the person, entity, or any~~
 5 ~~affiliate or agent of the person or entity is a provider of abortion services.~~

6 ~~(6)~~(5) For purposes of this section, "human sexuality instruction" means teaching or otherwise
 7 providing information about human sexuality, including intimate relationships, human sexual anatomy, sexual
 8 reproduction, sexually transmitted infections, sexual acts, sexual orientation, gender identity, abstinence,
 9 contraception, or reproductive rights and responsibilities."

10

11 **Section 4.** Section 41-1-405, MCA, is amended to read:

12 **"41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to
 13 render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation,
 14 to any injured person or any person regardless of age who is in need of immediate health care when, in good
 15 faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical
 16 or mental damage.

17 (2) A health professional may render nonemergency services to minors for conditions that will
 18 endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent,
 19 parents, or legal guardian.

20 (3) Consent may not be required of a minor who does not possess the mental capacity or who has
 21 a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal
 22 guardians, if a physician determines that the health service should be given.

23 (4) Self-consent of minors does not apply to sterilization ~~or abortion, except as provided in Title 50,~~
 24 ~~chapter 20, part 5."~~

25

26 **Section 5.** Section 47-1-104, MCA, is amended to read:

27 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at**
 28 **public expense.** (1) There is a statewide public defender system, which is required to deliver public defender

1 services in all courts in this state. The system is supervised by the director.

2 (2) The director shall approve a strategic plan for service delivery and divide the state into not
3 more than 11 public defender regions. The director may establish a regional office to provide public defender
4 services in each region, as provided in 47-1-215, establish a contracted services program to provide services in
5 the region, or utilize other service delivery methods as appropriate and consistent with the purposes described
6 in 47-1-102.

7 (3) When a court orders the assignment of a public defender, the appropriate office shall
8 immediately assign a public defender qualified to provide the required services. The director shall establish
9 protocols to ensure that the offices make appropriate assignments in a timely manner.

10 (4) A court may order assignment of a public defender under this chapter in the following cases:

11 (a) in cases in which a person is entitled to assistance of counsel at public expense because of
12 financial inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as
13 follows:

14 (i) for a person charged with a felony or charged with a misdemeanor for which there is a
15 possibility of incarceration, as provided in 46-8-101;

16 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as
17 provided in 40-6-119;

18 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
19 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian
20 Child Welfare Act, as provided in 41-3-425;

21 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

22 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

23 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

24 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
25 disabled person to a residential facility, as provided in 53-20-112;

26 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided
27 in 53-21-116;

28 (ix) for a respondent in a proceeding for the involuntary commitment of a person for alcoholism, as

1 provided in 53-24-302; and

2 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

3 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense
4 regardless of the person's financial ability to retain private counsel, as follows:

5 (i) as provided for in 41-3-425;

6 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent
7 or in need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction
8 Prosecution Act, as provided in 41-5-1607;

9 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on
10 Juveniles, as provided in 41-6-101;

11 ~~(iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent
12 for Abortion Act of 2013, as provided in 50-20-509;~~

13 ~~(iv)~~ (iv) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
14 person to a residential facility, as provided in 53-20-112;

15 ~~(v)~~ (v) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

16 ~~(vi)~~ (vi) for a person who is the subject of a petition for the appointment of a guardian or conservator in
17 a proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

18 ~~(vii)~~ (vii) for a ward when the ward's guardian has filed a petition to require medical treatment for a
19 mental disorder of the ward, as provided in 72-5-322; and

20 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

21 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
22 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
23 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

24 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public
25 defender services under this chapter may be appointed as a court-appointed special advocate or guardian ad
26 litem in a proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service
27 for the statewide public defender system and does not result in a conflict of interest."

28

1 **Section 6.** Section 50-1-116, MCA, is amended to read:

2 **"50-1-116. Definitions.** As used in 50-1-116 through 50-1-118, unless the context clearly indicates
3 otherwise, the following definitions apply:

4 (1) "Family planning services" means a range of appropriate methods to prevent, delay, space, or
5 otherwise time pregnancy, including natural family planning methods, abortion referrals, and infertility services.
6 ~~Family planning services do not include abortion, abortion referrals, or counseling in favor of abortion.~~

7 ~~(2) "Federally qualified abortion" means an abortion qualified for federal matching funds under the
8 medicaid program, 42 U.S.C. 1396, et seq., and as amended after this.~~

9 ~~(3)~~(2) "Federally qualified health center" means a health care provider that is eligible to receive
10 federal funds under 42 U.S.C. 1396d(1)(2)(B).

11 ~~(4)~~(3) "Hospital" means a hospital as defined in 50-5-101.

12 ~~(5)~~(4) "Public funds" means state funds, including without limitation state general revenue funds, state
13 special revenue funds, limited purpose grants or loans, and federal funds, federal state account 03026,
14 provided under Title X of the Public Health Service Act, 42 U.S.C. 300, et seq., Title IV, 42 U.S.C. 601, et seq.,
15 Title V, 42 U.S.C. 701, et seq., and Title XX, 42 U.S.C. 1397, et seq., of the Social Security Act.

16 ~~(6)~~(5) "Rural health clinic" means a health care provider that is eligible to receive federal funds under
17 42 U.S.C. 1395x(aa)(2)."

18

19 **Section 7.** Section 50-1-117, MCA, is amended to read:

20 **"50-1-117. Prioritizations of public funds to health care entities -- restrictions.** Subject to any
21 applicable requirements of federal statutes, rules, regulations, or guidelines:

22 ~~(4)~~ any expenditures or grants of public funds for family planning services by the state by and
23 through the department of public health and human services must be made in the following order of priority:

24 ~~(a)~~(1) to public entities;

25 ~~(b)~~(2) to federally qualified health centers and rural health clinics;

26 ~~(c)~~(3) to nonpublic health providers that have as their primary purpose the provision of the primary
27 health care services enumerated in 42 U.S.C. 254b(a)(1); and

28 ~~(d)~~(4) to nonpublic health providers that do not have as their primary purpose the provision of the

1 primary health care services enumerated in 42 U.S.C. 254b(a)(1); and.

2 ~~(2) the department of public health and human services may not enter into a contract with, or make a~~
3 ~~grant to, an entity that performs nonfederally qualified abortions or maintains or operates a facility where~~
4 ~~nonfederally qualified abortions are performed, provided, however, that nothing in 50-1-116 through 50-1-118~~
5 ~~shall be construed to apply to the receipt or administration of funds pursuant to 42 U.S.C. 1396, et seq."~~

6

7 **Section 8.** Section 50-15-101, MCA, is amended to read:

8 **"50-15-101. Definitions.** Unless the context requires otherwise, in parts 1 through 4 the following
9 definitions apply:

10 (1) "Advanced practice registered nurse" means an individual who has been certified as an
11 advanced practice registered nurse as provided in 37-8-202.

12 (2) "Authorized representative" means a person:

13 (a) designated by an individual, in a notarized written document, to have access to the individual's
14 vital records;

15 (b) who has a general power of attorney for an individual; or

16 (c) appointed by a court to manage the personal or financial affairs of an individual.

17 (3) "Dead body" means a human body or parts of a human body from which it reasonably may be
18 concluded that death occurred.

19 (4) "Department" means the department of public health and human services provided for in 2-15-
20 2201.

21 (5) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

22 (6) "Fetal death" means death of the fetus prior to the complete expulsion or extraction from its
23 mother as a product of conception, notwithstanding the duration of pregnancy. The death is indicated by the
24 fact that after expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as
25 beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. Heartbeats are
26 distinguished from transient cardiac contractions. Respirations are distinguished from fleeting respiratory efforts
27 or gasps.

28 (7) "Final disposition" means the burial, interment, cremation, removal from the state, or other

1 authorized disposition of a dead body or fetus.

2 (8) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons
3 contained in 40-1-402.

4 (9) "Live birth" means the complete expulsion or extraction from the mother as a product of
5 conception, notwithstanding the duration of pregnancy. The birth is indicated by the fact that after expulsion or
6 extraction, the child breathes or shows any other evidence of life, such as beating of the heart, pulsation of the
7 umbilical cord, or definite movement of voluntary muscles. Heartbeats are distinguished from transient cardiac
8 contractions. Respirations are distinguished from fleeting respiratory efforts or gasps.

9 (10) "Local registrar" means a person appointed by the department to act as its agent in
10 administering this chapter in the area set forth in the letter of appointment.

11 (11) "Person in charge of disposition of a dead body" means a person who places or causes a dead
12 body or the ashes after cremation to be placed in a grave, vault, urn, or other receptacle or otherwise disposes
13 of the body or fetus and who is a funeral director, an employee acting for a funeral director, or a person who
14 first assumes custody of a dead body or fetus.

15 (12) "Physician" means a person legally authorized to practice medicine in this state.

16 (13) "Registration" means the process by which vital records are completed, filed, and incorporated
17 into the official records of the department.

18 (14) "Research" means a systematic investigation designed primarily to develop or contribute to
19 generalizable knowledge.

20 (15) (a) "Stillbirth" means a fetal death occurring after a minimum of 20 weeks of gestation.

21 (b) The term does not include an abortion, as defined in ~~50-20-104~~ [section 2].

22 (16) "System of vital statistics" means the registration, collection, preservation, amendment, and
23 certification of vital records. The term includes the collection of reports required by this chapter and related
24 activities, including the tabulation, analysis, publication, and dissemination of vital statistics.

25 (17) "Vital records" means certificates or reports of birth, death, fetal death, marriage, and
26 dissolution of marriage and related reports.

27 (18) "Vital statistics" means the data derived from certificates or reports of birth, death, fetal death,
28 induced termination of pregnancy, marriage, and dissolution of marriage and related reports."

1
2 NEW SECTION. Section 9. Repealer. The following sections of the Montana Code Annotated are

3 repealed:

- 4 33-22-116. Prohibition on coverage of abortion services in qualified health plans.
5 33-22-117. Construction.

6
7 NEW SECTION. Section 10. Repealer. The following sections of the Montana Code Annotated are

8 repealed:

- 9 50-20-101. Short title.
10 50-20-102. Statement of purpose -- findings.
11 50-20-103. Legislative intent.
12 50-20-104. Definitions.
13 50-20-105. Duties of department.
14 50-20-106. Informed consent.
15 50-20-108. Protection of premature infants born alive.
16 50-20-109. Control of practice of abortion.
17 50-20-110. Reporting of practice of abortion.
18 50-20-111. Right to refuse participation in abortion.
19 50-20-112. Penalties.
20 50-20-113. Provision of information -- exceptions -- penalty.
21 50-20-301. Short title.
22 50-20-302. Legislative purpose and findings.
23 50-20-303. Definitions.
24 50-20-304. Publication of materials.
25 50-20-305. Emergency.
26 50-20-306. Physician reporting requirements -- penalty -- action -- department report.
27 50-20-307. Civil remedies.
28 50-20-308. Protection of privacy in court proceedings.

1 50-20-401. Offense of partial-birth abortion -- exception -- definitions -- penalties.

2

3 NEW SECTION. Section 11. Repealer. The following sections of the Montana Code Annotated are

4 repealed:

5 50-20-501. Short title.

6 50-20-502. Legislative purpose and findings.

7 50-20-503. Definitions.

8 50-20-504. Consent of parent or legal guardian required.

9 50-20-505. Consent form -- disclosure -- requirements for validity.

10 50-20-506. Proof of identification and relationship to minor -- retention of records.

11 50-20-507. Exceptions.

12 50-20-508. Coercion prohibited.

13 50-20-509. Procedure for judicial waiver of consent.

14 50-20-510. Criminal and civil penalties.

15 50-20-511. Construction.

16

17 NEW SECTION. Section 12. Repealer. The following sections of the Montana Code Annotated are

18 repealed:

19 50-20-601. Short title.

20 50-20-602. Definitions.

21 50-20-603. Protection of unborn child capable of feeling pain from abortion.

22 50-20-604. Criminal penalties.

23 50-20-605. Civil remedies.

24 50-20-606. Protection of privacy in court proceedings.

25

26 NEW SECTION. Section 13. Repealer. The following sections of the Montana Code Annotated are

27 repealed:

28 50-20-701. Short title.

- 1 50-20-702. Legislative findings and purpose.
- 2 50-20-703. Definitions.
- 3 50-20-704. In-person requirement.
- 4 50-20-705. Distribution of abortion-inducing drugs.
- 5 50-20-706. Prohibition on providing abortion-inducing drugs at elementary, secondary, and postsecondary
- 6 schools.
- 7 50-20-707. Informed consent requirements for abortion-inducing drugs.
- 8 50-20-708. Information required in state-prepared materials.
- 9 50-20-709. Reporting on chemical abortions.
- 10 50-20-710. Production of reporting forms.
- 11 50-20-711. Criminal penalties.
- 12 50-20-712. Civil remedies and professional sanctions.
- 13 50-20-713. Construction.
- 14 50-20-714. Right of intervention.

15

16 NEW SECTION. Section 14. Codification instruction. [Sections 1 and 2] are intended to be codified
 17 as a new part in Title 50, chapter 20, and the provisions of Title 50, chapter 20, apply to [sections 1 and 2].

18

19 NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

20

- END -